In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES ex rel. MARTIN A. KNAPP et al., Interstate Commerce Commissioners, plaintiff in error,

vs.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, defendant in error.

No. 261.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR PLAINTIFF IN ERROR.

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THE UNITED STATES EX REL. MARTIN A. KNAPP et al., Interstate Commerce Commissioners, plaintiff in error.
v.
THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, defendant in error.
} No. 251.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

In this case the jurisdiction of the circuit court is in issue and that question alone has been certified for determination. (R., 10.)

In due season the Interstate Commerce Commission ordered the Lake Shore and Michigan Southern Railway Company to make a report on or before the 15th of September, 1903, in the manner and form theretofore prescribed, for the year ending June 30. (R., 3.)

The railroad company failed to fully report the data or information called for, and especially to show the

tonnage, ton mileage, earnings, and receipts per ton per mile, on grain, hay, cotton, live stock, dressed meats, anthracite coal, bituminous coal, and lumber, carried in car-load lots, all of which information the commission deemed necessary to enable it to perform its duties and carry out the objects for which it was created. (R., 3)

On November 20, 1903, a petition was filed in the name of the United States upon the relation of the members of the Interstate Commerce Commission against the defendant railway, a corporation under the laws of Ohio and other States, in the circuit court of the United States for the northern district of Ohio, where the principal office of the company was located. (R., 3.)

The petition prayed that a writ of mandamus be at once issued commanding the company to make a report for the year ending June 30, 1903, setting forth the matters asked for by the Commission, but omitted from the report theretofore filed. (R., 4.)

The defendant appeared and moved that the petition be dismissed because the court had no original jurisdiction to issue a writ of mandamus as prayed for. (R., 8.) The motion was granted and the petition dismissed. (R., 9.)

The judge certified that the order of dismissal was based solely on the ground that the court had no jurisdiction. (R., 10.)

A writ of error was sued out and the cause brought here.

The act to regulate commerce, approved February 4, 1887 (24 Stat., 379), as amended by an act approved March 2, 1889 (25 Stat., 855), and by an act approved February 10, 1891 (26 Stat., 743), and by an act approved February 8, 1895 (28 Stat., 643), provides:

> SEC. 12. (As amended March 2, 1889, and February 10, 1891.) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production

of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. * * *

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts, and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees, and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes

of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

ARGUMENT.

I.

It is submitted that under the act of March 3, 1887 (24 Stat., 552), which defined the jurisdiction of circuit courts of the United States, and other similar acts passed prior thereto, a circuit court has jurisdiction of an original proceeding seeking relief by mandamus.

This proposition is undoubtedly out of harmony with the opinions of this court in a number of cases arising under the judiciary act of 1789 (1 Stat., 73) and the act of 1875 (18 Stat., 470).

McIntire v. *Wood*, 7 Cranch, 504.

McClung v. *Silliman*, 6 Wheat., 598.

Bath County v. *Amy*, 13 Wall., 245.

Graham v. *Norton*, 15 Wall., 427.

County of Greene v. *Daniel*, 102 U. S., 187, 195.

United States v. *Schurz*, 102 U. S., 378, 393.

Davenport v. *County of Dodge*, 105 U. S., 237, 242, 243.

Louisiana v. *Jumel*, 107 U. S., 711, 727.

Smith v. *Bourbon County*, 127 U. S., 105, 112.

High on Extraordinary Legal Remedies, secs. 589, 590.

Mystic Milling Co. v. *Chicago, M. & St. P. Railway Co. et al.*, 132 Fed. Rep., 289.

We do not find the question has been directly passed upon by this court in any case which arose since the act of March 3, 1887, defined the jurisdiction of United States courts. That act repealed all laws and parts of laws in conflict with its provisions.

The cases which deny to a circuit court the right to grant a mandamus in an original proceding hold that section 716, Revised Statutes—originally section 14, judiciary act, 1789—giving United States courts power to issue all writs not otherwise specially provided which may be necessary for the exercise of jurisdiction and agreeable to the principles and usages of law operates to prevent the issuing of a writ of mandamus except in aid of a jurisdiction previously acquired. The result of such holding and the reasons in opposition are set forth with great force in the dissenting opinion of Mr. Justice Bradley in *Rosenbaum* v. *Bauer* (120 U. S., 459).

We respectfully suggest, in view of the modern development of proceedings by mandamus and the very great importance of the remedy thereby, that the enforcement of the laws of the United States and the public interest would be advanced if this court would refuse to be bound by the decisions under earlier statutes and hold that under the ones now in force the circuit court has authority to entertain an original proceeding seeking a remedy by mandamus.

Hartman v. *Greenhow* (102 U. S., 672, 675).

A mandamus in cases of this kind is no longer regarded in this country as a mere pre-

rogative writ. It is nothing more than an ordinary proceeding or action in which the performance of a specific duty, by which the rights of the petitioner are affected, is sought to be enforced. Says Mr. Chief Justice Taney: "It undoubtedly came into use by virtue of prerogative power in the English Crown, and was subject to regulations and rules which have long since been disused; but the right to the writ and the power to issue it have ceased to depend upon any prerogative power, and it is now regarded as an ordinary process in cases to which it is applicable. It was so held by this court in the cases of *Kendall* v. *The United States*, 12 Peters, 615, and *Kendall* v. *Stokes et al.*, 3 How., 100." (*Kentucky* v. *Dennison*, 24 How., 66, 97.)

See also *Ames* v. *Kansas ex rel. Johnston* (111 U. S., 449, 459), wherein it was held that a proceeding in *quo warranto* was a suit of a civil nature and removable from a State court.

II.

Congress has power to authorize a circuit court to issue a mandamus in an original proceeding.

This proposition is supported by the authorities:

Kendall v. *United States*, 12 Peters, 522, 617.
United States v. *Schurz*, 102 U. S., 378.
Merrill on Mandamus, section 217.
High on Extraordinary Legal Remedies, section 589.

III.

If no other statute conferred upon a circuit court jurisdiction of an original proceeding for a mandamus such jurisdiction was given in cases where the writ is necessary to enforce orders of the Interstate Commerce Commission by the act to regulate commerce, approved February 4, 1887, and the amendments thereto.

Section 20 of the act to regulate commerce authorizes the Commission to require annual reports.

Section 12 (as amended March 2, 1889, and February 10, 1891) gives the Commission authority to inquire into the management of the business of common carriers and to obtain from them full and complete information necessary to enable it to perform its duties and carry out the objects for which it was created. It further authorizes and *requires* the Commission to execute and enforce the provisions of the act; "and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute *in the proper court* and to prosecute under the direction of the Attorney-General of the United States *all necessary proceedings for the enforcement* of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States." * * *

Mandamus is the only adequate remedy known to the law by which a common carrier can be forced to report.

Common carriers have assumed public functions,

and the duties imposed upon them by statute may properly be enforced by *mandamus*.

Merrill on Mandamus, sec. 1325.

Mobile and Ohio R. R. Co. v. *Wisdom*, 5 Heiskell (Tenn.), 125.

It is manifest that the purpose of the act to regulate commerce was to secure supervision of interstate commerce by Federal authorities. Such plan can only be made reasonably effective by resort to Federal courts. It can not be concluded, therefore, that Congress intended the Commission to rely upon State courts to secure enforcement of its orders if, indeed, such courts have power to entertain applications therefor.

The circuit court of the United States for the district where the carrier is located is a proper court to exercise the jurisdiction in question. It is the Federal court having the widest general jurisdiction and the one specifically mentioned and empowered to act by other sections of the statute.

We therefore submit that Congress intended by the commerce act to confer upon a circuit court of the United States jurisdiction to entertain an original proceeding instituted by the Interstate Commerce Comsion for *mandamus* to require a railway company to make a report as directed. Such a proceeding is the only one by which it can enforce obedience to its orders, and is therefore a *necessary* one within the meaning of section 12. It is not to be assumed that Congress required enforcement of the provisions of the

act at the hands of the Commission and withheld from it the only means by which that end could be secured.

In each one of sections 6, 9, 10, 12, 16, and 22 of the commerce act specific provision is made for enforcing the right, duties, and powers given therein. No specific power is granted in section 20 for enforcing its requirements, and this leads to the conclusion that the broad provisions contained in section 12 for all *necessary proceedings* for enforcement of the act were intended to apply. It would be unreasonable to conclude that section 20 was not to be enforced because provision for enforcing other sections was made in specific terms.

It may be contended that the criminal prosecutions provided for by the act were intended to secure compliance with those sections wherein no specific remedy was given. But it is well settled that a remedy by *mandamus* is not defeated by the existence of a punitive statute. (Merrill on Mandamus, sec. 53, and cases there cited; High Ex. Leg. Rem., secs. 18, 20.) The purpose of Congress was to *secure* proper information for the use of the Commission and the public. The effective way of carrying out such purpose is not by means of a criminal prosecution. *Mandamus* is the only instrumentality which can be safely relied upon to produce the desired result.

Many petitions in original proceedings seeking writs of mandamus to compel carriers to file annual reports were presented to the Federal courts in the year 1897.

Except in two of those cases, the carriers complied with the orders before they were heard and the suits were dismissed.

United States ex rel. I. C. C. v. *Chicago, K. & S. R. R. Co.*, 81 Fed. Rep., 783.

United States ex rel. I. C. C. v. *Seaboard Ry. Co.*, 82 Fed. Rep., 563, 566; *ib.*, 85 Fed. Rep., 955.

In none of the cases so instituted was the jurisdiction of the court to entertain the proceeding called in question.

We respectfully submit that the judgment below should be reversed.

J. C. McReynolds,
Assistant Attorney-General.

L. A. Shaver,
Solicitor for the Interstate Commerce Commission.

February, 1905.

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